

**GOODS MOVEMENT TRUCK PROGRAM GRANT AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
MISC TRUCKING, INC.**

CONTRACT (PROJECT) NUMBER: 13GM1234

This grant agreement (Agreement) is made and entered into between Misc Trucking, Inc. (Grantee) and the Bay Area Air Quality Management District (Air District), hereinafter referred to jointly as the “Parties”.

RECITALS

- 1) The Air District has established and is implementing an incentive Truck Program (Program) for trucks certified for on-road use that move goods using the primary California trade corridors according to requirements of the Proposition 1B: Goods Movement Emission Reduction Program (GMERP). Under the Program, trucks will be replaced or repowered to enable trucking enterprises to achieve early or surplus emission reductions under the California Air Resources Board (CARB) “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles” (Section 2025 of Article 4.5, Chapter 1, Title 13 of the California Code of Regulations) .
- 2) The Program is funded with GMERP funding from CARB.
- 3) The Air District issued a call for Program projects, and the Grantee submitted an application for a Program project on or before the submittal deadline.
- 4) Based on the information contained in the Grantee’s application the Air District has determined that the Grantee has proposed a truck replacement or repower project (“Project”) that meets basic application requirements of the CARB 2013 GMERP Guidelines (“Guidelines”). Final eligibility is based on a completed pre-inspection, and the verification that the Project meets all the requirements for this Program.

SECTION I

GRANTEE OBLIGATIONS

- 1) The Grantee shall implement the Project, which consists of a truck replacement or repower using specified Equipment (“Equipment”), as described more fully in Attachment A, “Project Description.” The Grantee shall implement the Project in accordance with the terms and conditions of this Agreement and all attachments thereto. Failure to do so will be deemed a breach of this Agreement, and the Air District may terminate this Agreement pursuant to the termination provisions herein.
- 2) Certain terms and conditions in this Agreement, including, but not limited to, Right to Claim Emission Reductions, Section III.20, and Attachment A, Paragraphs 6, 7, 8 and 12 are intended to implement Guidelines requirements. If CARB acts to revise the Guidelines requirements or other CARB requirements applicable to this Agreement, and the District notifies the Grantee of these revised requirements, the Grantee shall comply with the revised requirements as described in the notification from the District.
- 3) The Grantee understands and agrees that the Air District or its designee may conduct a pre-inspection on all vehicles to be replaced or repowered pursuant to this Agreement to verify that all requirements of the GMERP Program regarding eligibility of existing vehicles are met. This includes but is not limited to the year of the vehicle or engine to be replaced, operational conditions or usage, or truck weight rating (GVWR) and engine identification and certified emission rating.

- 4) The Grantee understands that this Agreement was entered into prior to completion of all steps necessary to determine Project eligibility. Grantee further understands the Project will not be considered eligible for funding until the Air District has notified the Grantee in writing (1) that the Air District or its designee has completed the pre-inspection and eligibility review and found the Project eligible, (2) that funding is available, (3) that the contract has been executed, and (4) that the Grantee may proceed with the Project. Grantee further understands that unless otherwise approved by CARB, Projects not completed on or before December 31, 2014 are ineligible for funding and the Air District will not pay any Project Grant Funds for monies expended by the Grantee and will terminate the Project. Grantee hereby agrees that, although pre-orders of equipment for the proposed Project are not prohibited prior to Grantee's receipt of the notification from the Air District described in this Section I, Paragraph 4, any expenditure prior to the notification is at the Grantee's own risk, and any costs incurred may not be reimbursed if the Project is found not to be eligible.
- 5) The Grantee understands and agrees that CARB, as a third party beneficiary, has the right to audit and enforce this Agreement throughout the Term of this Agreement and until the second anniversary of the last day of the Project Term or three years after final payment, whichever is later. The obligation to allow CARB to audit until the time specified shall survive expiration or termination of this Agreement.
- 6) The Grantee understands and agrees that the Air District will only reimburse the Grantee for eligible Project costs. Eligible Project Costs are those costs that the Grantee expends that the Air District determines are verified by invoices and are allowable under the Program Guidelines and this Agreement.
- 7) The Grantee shall maintain the Project Equipment and infrastructure, as defined and listed in Attachment A, in good working order and according to manufacturer's recommendations throughout the Project Term.
- 8) The Grantee shall complete the Project in accordance with the following payment and reporting conditions:
 - a) The Air District's funding obligation under this Agreement is limited to the Total Grant Funds Awarded, specified in Attachment A, Paragraph 4 and limited by the conditions set forth in Attachment A. Any Project cost in excess of the Total Grant Funds Awarded is the sole responsibility of the Grantee.
 - b) The Grantee shall submit, or direct their equipment dealer to submit, an invoice to the Air District for reimbursement of eligible costs incurred to complete the Project that demonstrates compliance with the Project Description in Attachment A, Paragraph 5, 8 and 11 and any modifications made pursuant to Section I.2, or through amendment pursuant to Section III.3, or through written waiver pursuant to Section III.15. The invoice shall itemize the total funds requested for this reimbursement, which shall include an itemization of payments to vendors, consultants, and contractors. The invoice shall also include copies of invoices that document the goods and services provided by vendors, consultants, and contractors and documentation of the total hours incurred to complete the Project, the hourly rates of any labor charges, the costs of such goods, and any other eligible costs. The invoice shall be submitted with a summary sheet that specifies the Program Project Number. The invoice shall be accompanied by a request for the Air District or its designated agents to conduct post-inspection or shall be submitted with post-inspection documents provided by a District-Certified vendor as required by the Program.
 - c) The Grantee shall submit the final invoice to the Air District no later than ten (10) days after the deadline set forth in the Project Schedule in Attachment A, Paragraphs 5, 8 and 11.
 - d) The Grantee shall maintain and submit records with the Annual Reports that document that Grantee has complied with all Project Specific Information, including but not limited to the Project Description, Operating Parameters, proof of current insurance, and the Project Schedule, as set forth in Attachment A. The Grantee shall retain, all documents, invoices, and correspondence associated with the application, award, contract, monitoring, enforcement, and reporting requirements at least two years after Project Term or three years after final payment, whichever is later, as defined in Attachment A. For the purposes of ongoing evaluations or auditing, records shall

be readily available and accessible to the Air District, CARB, and their designated agents upon request.

- 9) The Grantee shall allow the Air District, CARB, and their designated agents to inspect the Project and to conduct reasonable financial and performance audits of the Project to enforce terms of the Agreement. Performance audits by their nature may need to occur with less notice and in shorter time frames and the Air District reserves the right to determine when and how these audits will occur. The Grantee further agrees to cooperate fully with such inspections and audits, including providing copies of any Project records related to performance of this Agreement requested by the Air District, CARB and their designated agents.
- 10) The Grantee shall acknowledge the Air District and the GMERP as a funding source for the Project in any related media events, articles, news releases or other publicity materials. The Air District shall approve in writing any report or other document describing the Program, this grant, or this Agreement prior to release of any such report or document.
- 11) The Grantee shall assure that all funds received under this Agreement are expended only in accordance with this Agreement and all applicable provisions of law and their implementing regulations and the Guidelines.
- 12) The Grantee shall monitor the Project and operational status of the Project Equipment throughout the Project Term. The Grantee will notify the Air District in writing of any material change in operational status of the Project Equipment funded and installed under this Agreement within thirty (30) calendar days of its occurrence. For purposes of this Agreement, a "Change in operational status" occurs whenever any Project Equipment funded under this Agreement is removed from active service, removed from goods movement service, wrecked, scrapped, sold, or transferred to another entity, before full completion of the Project Term specified in Attachment A. If the Grantee fails to provide the required written notice of a change in operational status on a timely basis, the Air District may require repayment of the Total Grant Funds paid, in accordance with the provisions set forth in the Paragraph 13 of Attachment A.
- 13) The Grantee shall neither seek nor accept any additional grant funds or incentives from any State of California agency or any local air quality district in order to implement this Project, except for any funds or incentives approved by both the Air District and CARB prior to or at the time of application and described in the application.
- 14) The Grantee shall obtain and maintain throughout the Project Term the insurance coverage specified in Attachment B, "Insurance Requirements," and comply with all insurance requirements set forth therein, including the provision of documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement.
- 15) The Grantee shall use the Air District's approved logo as specified below:
 - a) The logo will be displayed on the funded Project Equipment; and
 - b) The logo will be used on any printed material intended for public consumption associated with the Project.
- 16) The Grantee shall comply with all "Special Conditions" listed in Attachment A, Paragraph 14.
- 17) The Grantee agrees that any accident, damage, loss, or theft of Project Equipment shall be handled in accordance with Attachment C.
- 18) The Grantee understands that any delegation of its duties and obligations under this Agreement must comply with Section III.12 and agrees to comply with the requirements of Attachment D for any sale or transfer of Project Equipment.
- 19) The Grantee is hereby informed that accepting grant funds from the Program may lead to tax liability and that by signing this contract, agrees to accept this liability.

SECTION II

AIR DISTRICT OBLIGATIONS

- 1) The Air District will reimburse the Grantee the total amount of eligible Project costs in an amount not to exceed the Total Grant Funds Awarded in Attachment A.
- 2) The Air District's reimbursement obligation under this contract is contingent upon the availability of funds from which payment for Agreement purposes can be made. No legal liability on the part of the Air District for any payment will arise until funds are made available to the Air District for this Agreement, and the Air District notifies the Grantee in writing that funds are available and that the Grantee may proceed with the Project.
- 3) The Air District will endeavor to pay the Grantee the undisputed amount of an approved invoice within forty-five (45) calendar days of the Air District's approval of the invoice as set forth in Attachment A, Paragraph 11. Before an invoice can be approved, any post-inspection required by the Program must be satisfactorily completed.
- 4) The Air District will provide timely notice to the Grantee prior to the Air District conducting an audit and will make best efforts to provide timely notice of any performance and fiscal audits of the Project to be conducted by CARB, State auditors, or their authorized representatives, which audits may include record and equipment inspections.
- 5) The Air District will provide the Grantee a copy of final State and Air District fiscal and performance audits of the Project.
- 6) The Air District will provide the Grantee with all required Air District-approved Project reporting forms.
- 7) The Air District will make its logo available to the Grantee.

SECTION III

GENERAL PROVISIONS

- 1) **Effective Date:** The effective date of this Agreement is the date that the Executive Officer/Air Pollution Control Officer executes this Agreement (Effective Date).
- 2) **Project Term:** The term of this Agreement shall be from the Effective Date of this Agreement and will continue in full force and effect until the end of the Project Term, which is defined in Attachment A, Paragraph 6 unless terminated or cancelled sooner in accordance with Section 7 below. The Grantee cannot commence any work on the Project in reliance on this Agreement prior to the date of notification described in Section I.4 and Section II.2.
- 3) **Amendment:** This Agreement may not be modified except in writing, signed by both Parties, and any attempt at oral modification of this Agreement shall be void and of no effect. Any change in Project scope shall constitute an amendment under this Agreement.
- 4) **Project Contacts:** Each Party shall designate its Project Contact, who shall be the day-to-day liaison to the other Party pertaining to implementation of the Project and this Agreement. All correspondence shall be addressed to the Project Contact and shall reference the Project Number. Each Party has designated its initial Project Contact and its Project Contact's address, telephone number, fax number, and email address. The initial Project Contacts are listed in Attachment A, Paragraph 10. Each Party shall notify the other Party of a significant change of its Project Contact or the Project Contact's contact information in writing no later than thirty (30) days from the date of the change.
- 5) **Notices:** Any notice that may be required under this Agreement shall be in writing and made by personal service or U.S. Postal Service first class mail, or by certified mail (return receipt requested) to the addressee designated by each Party for receipt of notices. Notices are effective upon receipt. All notices shall reference the Project Number. Each Party has designated its initial addressee and address for notice in

Paragraph 9 in Attachment A. Each Party shall promptly inform the other Party of any changes of notice within thirty (30) days of such change.

- 6) Survival of Terms: Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled, and shall apply to both Parties' respective successors and assigns.
- 7) Termination:
 - a) Voluntary. Either Party may terminate this Agreement at will, and without specifying any reason, at any time prior to the Grantee's expenditure of funds for approved and eligible costs and expenses in furtherance of the Project by providing written notice of the termination. The notice of termination shall specify the effective date of termination, and shall be delivered no less than thirty (30) calendar days prior to the effective date of termination. Such termination shall be without penalty or further liability between the Parties arising from or related to alleged nonperformance or breach of this Agreement. The Air District shall notify CARB ten (10) days prior to issuing a notice to terminate the Agreement at will. The Parties may jointly agree to terminate this Agreement after Grantee's receipt of Project Grant Funds if (1) Project Equipment is accidentally rendered inoperable or stolen, and Grantee elects to terminate the Agreement pursuant to the procedures in Attachment C, (2) Grantee sells or transfers Project Equipment pursuant to the procedures in Attachment D, and, through a novation, the Air District and the new owner substitute a new agreement for this Agreement, or (3) Grantee elects to a buy-out of this Agreement pursuant to the procedures in Attachment E.
 - b) Default. The Project shall be disqualified from grant funds if the pre-inspection by the Air District reveals a discrepancy with the application submitted by the Grantee that would affect the Project's ranking or eligibility status with respect to the Program Guidelines. The Air District may terminate this Agreement for material breach of the Agreement by the Grantee. The Air District shall deliver to the Grantee a written notice of the event of default, which shall specify that if the Grantee fails to cure the default within ten (10) business days from delivery of such notice, the Air District may terminate this Agreement at any time thereafter. If the Grantee fails to cure the default and the Air District elects to terminate the Agreement, the Air District shall provide notice to the Grantee of such election. The notice will specify the amount of Project Grant Funds to be reimbursed to the Air District, if any, which the Grantee shall reimburse within thirty (30) days of the effective date of termination. The Air District shall calculate the reimbursement based on the repayment formula set forth in Paragraph 13 of Attachment A. Delays in project development and implementation shall not be considered material breaches of the Agreement, provided the Grantee promptly notifies the Air District in writing regarding the duration and reasons for the delay, and the Air District reasonably determines that the Grantee is proceeding diligently and in good faith to complete the Project.
 - c) The Air District shall not pay any Project Grant Funds in the event that this Agreement is terminated and no funds have been expended by the Grantee. If the Project has been completed and the Air District has paid the Grant Funds to the Grantee, the Grantee may not terminate this Agreement, unless it reimburses the Air District the amount of Project Grant Funds due based on the repayment formula set forth in Attachment A, Paragraph 13, in which case such reimbursement along with the other remedies in the referenced Paragraph shall be available to the Air District and CARB as remedy against the Grantee for alleged breach of this Agreement.
- 8) Additional Acts and Documents: Each Party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments that are reasonably required to carry out the provisions, intent and purpose of this Agreement. All attachments to this Agreement are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
- 9) Time of the Essence: Time is of the essence in respect to all provisions of this Agreement that specify a

time for performance; provided, however, that the foregoing may not be construed to limit or deprive a Party of the benefits of any change in schedule made through amendment pursuant to Section III.3 or as allowed through written waiver pursuant to Section III.15 below.

- 10) Indemnification: The Grantee shall indemnify and hold harmless CARB, the Air District, its officers, employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance by the Grantee of its duties under this Agreement, including its implementation of the Project and its operation of the Project Equipment, and shall require any third party who owns or operates the Project Equipment or who completes or implements the Project to indemnify and hold harmless CARB and the Air District, its officers, employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of their completion or implementation of the Project. The Grantee's indemnification obligation and its obligation to have applicable third parties indemnify the Air District shall survive expiration or termination of this Agreement.
- 11) Reasonable Consent and Approval: Except as otherwise provided in this Agreement, whenever a Party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed.
- 12) Assignment: Neither Party shall assign, sell, license, or otherwise transfer any of its rights nor shall either Party delegate any of its duties or obligations under this Agreement to a third party without the prior written consent of the other Party. Any attempted assignment or delegation in violation of this provision is voidable at the option of the non-assigning and non-delegating Party and will entitle that Party to terminate this Agreement. In the event of such assignment, sale, transfer, license, or subcontract by the Grantee to a third party, all obligations and duties under this Agreement shall become the obligations and duties of the successor entity.
- 13) Independent Contractor: Grantee and its officers, employees, agents, and representatives shall not be considered employees or agents of the Air District or of CARB.
- 14) Public Documents: To the extent not otherwise prohibited by law, and to the extent required by the California Act (Government Code section 6250 et seq.), the Grantee will place in the public domain any software, written document, or other product developed with Proposition 1B: Goods Movement Emission Reduction Program funds as part of the Project.
- 15) Waiver: No waiver of a breach, or failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 16) Severability: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.
- 17) Force Majeure:
 - a) Neither CARB, the Air District nor the Grantee shall be liable for, or deemed to be in default for, any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for the performance of the Project, or other causes, except financial, that are beyond the reasonable control of CARB, the Air District or the Grantee, for a period of time equal to the period of such force majeure event, provided that the Party failing to perform notifies the other Party within fifteen (15) calendar days of discovery of the force majeure event, and provided further that that Party takes all reasonable

action to mitigate the damages resulting from the failure to perform.

- b) Notwithstanding Section III.17(a), if the cause of the force majeure event is due to a Party's own action or inaction, then such cause shall not excuse that Party from performance under this Contract.
 - c) Notwithstanding Section III.17(a), fire or casualty loss to Project Equipment shall not excuse Grantee's failure to perform under this Agreement. Grantee shall be responsible to repair or replace Project Equipment or to reimburse the Air District in accordance with Paragraph 13 of Attachment A.
- 18) Governing Law: This Agreement and any dispute that arises from the relationship between the Parties to this Agreement shall be governed by California law, including the CARB California Goods Movement Bond Program Guidelines, but excluding any laws that direct the application to another jurisdiction's laws. Venue for resolution of any dispute that arises from or relates to this Agreement, including mediation, shall be San Francisco, California.
- 19) Public Entities: Conflict of Interest: If the Grantee is a public entity, it warrants and represents that its public officials, including its officers and employees in their official capacity, presently have no interest and agrees that its public officials, including its officers and employees in their official capacity, will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 et seq. and 87100 et seq. during the performance of this Agreement.
- 20) Right to Claim Emission Reductions: The Air District and CARB retain the exclusive right to claim any emission reduction credits under State or federal law that might result from emissions reduced by the Project. The emissions reduced by the Project may not be used by the Grantee to comply with any local, State, or federal air pollution regulation or law, or used to fulfill the Grantee's obligations pursuant to a legal settlement. All of the emission reduction benefits of funded projects are creditable towards applicable State Implementation Plan commitments and California's greenhouse gas reduction targets.

- 21) Integration of Agreement: This Agreement, including all attachments hereto and the Grantee's application, represents the final, complete and exclusive statement of the Agreement between the Air District and the Grantee related to the Parties' rights and obligations under, and subject matter of, this Agreement and supersedes all prior and contemporaneous understandings and agreements of the Parties. No Party has been induced to enter into this Agreement, nor is any Party relying upon, any representation or warranty outside those expressly set forth herein.
- 22) Duplicate Execution: This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

SIGNATURES:

Bay Area Air Quality Management District

Grantee

By: _____

By: _____

Jack P. Broadbent
Executive Officer/Air Pollution Control Officer
Bay Area Air Quality Management District

Joe Trucking
Corporate Maintenance Manager
Misc Trucking, Inc.

Date: _____

Date: _____

Approved as to legal form:

By: _____

Brian C. Bunker
District Counsel
Bay Area Air Quality Management District

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ATTACHMENT A - PROJECT SPECIFIC INFORMATION

[Note: The section numbers shown below refer to Sections in the Grant Agreement.]

1. **Grantee:** Misc Trucking, Inc.
2. **Contract (Project) Number (Section III.5):** 13GM1234
3. **Air District Approval Date (Section III.1):** Effective Date
4. **Total Grant Funds Awarded (Sections I.6, II.1):** Total Grant Funds Awarded: **\$110,000.00**. The Air District will pay the Project Costs up to the maximum of funding limits defined in Program Guidelines for Projects described in Project Description. Air District grant funds may only be used for direct costs to purchase or install the equipment described. Taxes, consulting services or any other cost not eligible for Program funds are ineligible costs under this Agreement.
5. **Project Description: Replace Three (3) Diesel On-Road Trucks with Three (3) On-Road Trucks -**
The Grantee shall replace the three (3) existing diesel trucks with three (3) replacement trucks as shown in the Table below. If the Project consists of multiple trucks, each individual truck project is denoted below by the Project Number followed by the Truck Number as set forth in the table (e.g., 13GM1234-1, 13GM1234-2, etc.).

Project Description 13GM1234-1, 4 & 5								
Truck Number & Type	Existing Truck				Replacement Truck and Engine	Operation & Emission Reductions		
	Truck MY/ Make/ GVWR	VIN	Engine MY/ Make	Engine Serial Number	Truck Weight Class/Engine MY & Duty Cycle/Fuel	Annual Miles/ % CA Travel/PTO	Total Reductions (lbs)	Funds Awarded
13GM1234-1	2000/ Peterbilt/ 50,000 lb	1XPBGDU9X123456789	2000/ Caterpillar	2KS12345	Class 8 MY2013+ HHD Fuel: Diesel	30,729 100% PTO: 1,107 hrs	PM: 178.10 NOx: 7,394.17	\$50,000.00
13GM1234-4	2000/ Peterbilt/ 27,000 lb	1XPBGDU9X123456789	2000/ Caterpillar	2KS12345	Class 7 MY2010-2012 MHD Fuel: Hybrid	36,680 90%	PM: 212.60 NOx: 8,826.13	\$35,000.00
13GM1234-5	2001/ Peterbilt/ 24,000 lb	1XPBGDU9X123456789	2001/ Caterpillar	2KS12345	Class 6 MY2013+ MHD Fuel: Electric	59,595 100%	PM: 345.50 NOx: 14,340.05	\$25,000.00
Total grant funds awarded: \$110,000.00								

* The Grantee may propose equipment equivalent to the Project Equipment, but only with advanced written approval from the Air District and, in most cases, an amendment to this Agreement. The proposed equivalent equipment must meet or exceed the emissions reductions to be achieved by the Project and must meet or exceed the operational parameters specified in Attachment A of this Agreement.

The table above reflects the Project as proposed by the Grantee in the grant application and as approved by the Air District. The Air District has awarded this Grant based on the Grantee's Existing Equipment, total annual miles and Equipment usage, and the total PM reduced and total NOx reduced by the Project. Any changes to the Existing or Replacement Equipment (Project Equipment), usage or other factors affecting the calculation of emissions reductions or Funds Awarded must be requested in writing by the Grantee prior to incurring costs for the Project in reliance on this Agreement, and the Air District must approve the changes in writing to the Grantee. Any changes to the Project described may require amendment of this Agreement (Section III, Paragraph 3). Changes to the Project will only be approved by the Air District if these comply with the Program Guidelines and result in:

- Grant Funds Awarded amount equal to or less than the amount described in the table above, and
- a calculated Project cost-effectiveness equal to or greater than the amount/s described in the table above, and
- the re-ranking of the adjusted Project remaining above the funding line (i.e., cutoff line) on the ranklist on which the Project was originally ranked.

The Engine for each Replacement Truck must meet the manufacture year (MY) 2010-2012 (for used truck) or 2013+ (for new truck) Project requirement and 2010 emission standard shown in the table above. For an Engine to meet the applicable standard, it must have been certified by CARB Executive Order as complying with both Family Emission Limit (FEL) and certification (CERT) values equal to or better than 0.20 g/bhp-hr NOx and 0.01 g/bhp-hr PM.

Diesel engines for Replacement Trucks for Class 8 truck projects shall be certified to comply on the heavy-heavy-duty test cycle (HHD), and for Class 6 and Class 7 truck projects shall be certified to comply with a minimum of the medium-heavy-duty test cycle (MHD). Engines for all Class 6-8 hybrid and electric truck replacement projects shall follow the CARB Heavy Duty Hybrid Electric Vehicle Certification Procedure. Any exceptions must be approved by the Air District prior to Grantee incurring costs for the Project, and must comply with Program requirements.

To be eligible, at the time of post-inspection, for a Class 8 truck project, the odometer of the Replacement Truck and Engine must record less than 500,000 miles driven or for a Class 7 truck project, the odometer of the Replacement Truck and Engine must record less than 250,000 miles driven. The Air District shall verify odometer at the post-inspection.

Replacement Trucks shall not have a salvage history on their title, and the original equipment manufacturer (OEM) Engine installed in the chassis must be of the same manufacture year, make and configuration as was originally provided from the Truck manufacturer when the chassis and Engine were both new. Replacement Trucks for Class 6 purchases must be new equipment [not used or previously-owned].

If PTO usage hours are denoted in Attachment A, Paragraph 5 as a factor in the emissions reductions and cost-effectiveness of the Project, the Grantee shall ensure that Replacement Equipment shall be installed and/or equipped with a tamper-proof, non-resetting hour meter. If the hour meter fails during the Project Term, the Grantee must notify the Air District (Section I, Paragraph 12) and take action to repair the device or provide other documentation of operating hours.

Trucks to be replaced shall be scrapped by a licensed dismantler that is Certified by the Air District unless the truck is selected by CARB or its designees for reuse in an approved program as allowed by the Program Guidelines. Prior to destruction, the Existing Truck must be in roadworthy and operable working condition. The Existing Truck including the frame and Engine shall be physically destroyed in such a manner to eliminate the possibility of future operation. The Engine block shall be punctured and the truck frame rails shall be cut to ensure that the truck shall not be used again.

6. **Project Term (Section II.2 & Section III.2):** The Project Term shall commence on the date noticed in writing by the Air District. Unless terminated pursuant to Section III.7, this Agreement shall remain in full force and effect for five (5) years or 500,000 miles whichever comes first, after the funded Replacement Equipment is placed into service as documented by the post-project inspection. A post-project inspection shall be conducted by the Air District or its designee after the funded Equipment has been purchased and is ready to be placed into service. The post-project inspection shall document the date the Equipment was operational and verify that the Equipment conforms to the Project Description.
7. **Operating Parameters:** Grantee shall continue usage described in the Project Description for the Project Term. The Grantee shall operate Replacement Equipment within California for 100% of each unit's total operating miles (unless 90% option was selected on the application submitted by the Grantee), shall operate in goods movement service the majority of the time, and shall operate no less than 50% in the primary trade corridors of the State. The Grantee shall register Project Equipment with California base-plated registration or California IRP (for 90% option only). Dual plates and any other out-of-state registrations are prohibited except for required dual-plating by Mexico for trucks operating in California-Mexico trade. The Grantee shall properly maintain the funded Replacement Equipment in good operating condition and according to the manufacturer's recommendations.

Pursuant to Paragraph 13 of this Attachment, the Grantee may be required to repay Grant funds upon the occurrence of specified actions that would reduce the air quality benefits of this Agreement.

8. **Project Schedule:** For new truck purchases, the Grantee shall submit a copy of the CARB engine Executive Order and the purchase order for the new Equipment to the Air District no later than ninety (90) calendar days after contract execution. For used truck purchases, the Grantee shall submit to the Air District proof of undertaking the final purchase of a used truck to complete the Project no later than ninety (90) calendar days after contract execution. **By no later than Friday, October 31, 2014, the Project must be completed by Grantee and inspected by the Air District or its designee.** Projects failing to meet this deadline shall be terminated and the Air District shall not pay any Project Grant Funds for monies expended by the Grantee. Grantee must submit its request for payment in accordance with Paragraph 11 of this Attachment.
9. **Notices (Section III.5):** Any written notice required is to be addressed to:

<u>Grantee:</u> Misc Trucking, Inc. 123 Main St. San Francisco CA 94109	<u>Air District:</u> Damian Breen Deputy Air Pollution Control Officer Bay Area Air Quality Management District 939 Ellis Street San Francisco, CA 94109
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10. **Contacts (Section III.4):** Contact persons for day-to-day activities of the Project are:

<u>Grantee:</u> Joe Trucking Corporate Fleet Manager 123 Main St. San Francisco CA 94109 (415) 123-4567 jtrucking@MTrucking.com	<u>Air District:</u> Tina McRee Supv AQ Spec, Strategic Incentives Division Bay Area Air Quality Management District 939 Ellis Street, San Francisco, CA 94109 Phone: (415) 749-4701 FAX: (415) 749-5020 tmcree@baaqmd.gov
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11. **Request for Payment (Section I.8 (a-d)):** No later than ten (10) days after the deadline in the Project Schedule or thirty (30) days after the completion of work set forth in the Project Description, whichever is

earlier, the Grantee shall submit an invoice to request payment of the Air District grant funds. The invoice shall provide documentation for all Project costs and document the make, model, and serial number for the Equipment purchased. If costs are incurred that are not directly related to the Project as described in Paragraph 5, all such costs must either be deleted when the Project invoice is prepared, or clearly identified as costs that are not eligible for reimbursement by the Air District. Upon verification that the Project has been completed according to the terms of this Agreement based on completion of required inspections by the Air District or its designated agents, the Air District will issue payment of the Grant Funds to the Grantee. At the request of the Grantee, the Air District may make direct payments to vendors including vehicle dealers and manufacturers. For Projects involving multiple trucks, the Air District will issue progress payment/s for individual Trucks at the request of the Grantee if (1) the new Equipment has been delivered and is operational, and (2) the post-inspection has successfully been completed.

- 12. Annual Monitoring Reports:** The Grantee shall be responsible for annual reporting to the Air District. The Grantee shall submit annual reports for the equipment Project Term (see Paragraph 6), in a format approved by the Air District. The monitoring report shall include, but is not limited to:

- Contact information (owner name, address, phone, etc.)
- Proof of current California vehicle registration
- Fleet size
- Proof of insurance
- Current odometer reading (estimate total vehicle mileage if odometer is missing or broken)
- Certification of annual California vehicle miles travelled (since last report)
- Certification of percent of operations within California (90% or 100% based on Project Description in this Agreement)
- Certification of no less than 50% of travel in the four primary trade corridors of California and percent of travel within each trade corridor
- As applicable, PTO usage hours
- Summary of maintenance performed and inspections conducted
- Certification that the Project was operated in accordance with this Agreement and that all information submitted is true and accurate.

The first annual report shall be submitted by February 1 of the calendar year following Project Completion as described in Attachment A, Paragraph 8 and will report on any activity in the previous calendar year, January 1 through December 31. The first annual report shall include a report on the Grantee's progress in meeting milestones listed in the Project Schedule as set forth in Attachment A, Paragraph 8. Subsequent annual reports shall be submitted by February 1 of each succeeding year with the final annual monitoring report due by February 1 in the last year of the Project Term. Project records must be retained for at least two years after contract expiration or three years after final Project payment, whichever is later. This obligation to retain records shall survive expiration or termination of this Agreement.

If the Grantee fails to submit annual monitoring reports in a timely manner, the Air District may perform a Project performance audit and impose other penalties as described in this Agreement. Failure to submit monitoring reports is considered a breach of the terms of the Grant Agreement and may jeopardize the Grantee's eligibility to apply for grant funding for any future projects.

- 13. Repayment of Grant Funds For Failure to Complete Project (Section I.12 III.7b & c):** Equipment Project contract non-performance includes, but is not limited to:

- Failure to meet the terms and conditions of an executed Grant Agreement, including, but not limited to Equipment operating conditions and geographic restrictions.
- Equipment or Engine is non-operational or malfunctioning, or damaged.
- Failure to operate or maintain Equipment in accordance with manufacturer's recommendations.
- Intentional destruction of Equipment.
- Failure to meet established deadlines for Equipment Project completion.

- Failure to allow for an electronic monitoring device, or tampering with an installed device or data.
- Misuse of direct payments-to-vendors provisions.
- Insufficient, incomplete, or faulty Project documentation.
- Failure to provide required documentation or reports in a timely manner.

The Grantee shall repay the Total Grant Funds Awarded on a prorated basis based on the Project Term. Additional remedies available to the Air District based on non-performance shall include:

- Termination of the contract.
- A ban on the Grantee's ability to participate in future State incentive programs.
- Prohibiting a specific truck from participating in another State incentive program.
- Other fiscal penalties on the Grantee based on the severity of the non-performance.
- Such other remedies as are available at law or in equity.

If the failure to complete the Project results from accident rendering Project Equipment inoperable or theft of Project Equipment, repayment shall be handled as described in Attachment C.

If the failure to complete the Project results from Grantee's sale of Project Equipment without compliance with the transfer/sale requirements of Attachment D, the remedies set forth in this Paragraph 13 may be imposed.

If the Grantee expects to be unable to complete the Project and obtains Air District approval for buy-out of this Agreement pursuant to Attachment E, repayment shall be handled as described in Attachment E.

The repayment obligations above shall survive expiration or termination of this Agreement.

14. Special Conditions:

- A. The Grantee shall at any time during the contract Term agree to accept the installation and use of an on-board electronic monitoring device if requested by the Air District.
- B. The Grantee shall demonstrate proof of Equipment warranty meeting the Program requirements according to Program Guidelines.
- C. Grantee shall not use any equipment funded by the Proposition 1B: Goods Movement Emission Reduction Program towards a fleet compliance strategy until CARB-specified dates allow. CARB will post and update information on the Goods Movement Program website: <http://www.arb.ca.gov/bonds/gmbond/gmbond.htm>.
- D. Funding for this Project and for Equipment included in the Project Description is contingent upon successful completion of a compliance check by CARB to verify the Grantee's fleet complies with all applicable air quality regulations. Grantees are required to maintain compliance with air quality regulations, including advisories or amendments, for the duration of the Project Term, and the Air District may, according to the Guidelines, suspend or cancel funding for Project Equipment found to have violations.
- E. Until the Replacement Truck for each Existing Truck listed in Attachment A Paragraph 5 is placed into service, Grantee is required to maintain the Existing Truck as required by the Program Guidelines, including but not limited to maintaining California-based registration, usage and operability, Engine and other Equipment eligibility characteristics.
- F. For new truck purchases, the Grantee shall submit a copy of the CARB engine Executive Order and the purchase order for the new Equipment to the Air District no later than ninety (90) calendar days after contract execution. For used truck purchases, the Grantee shall submit to the Air District proof of undertaking the final purchase of a used truck to complete the Project no later than ninety (90) calendar days after contract execution. In both cases, documentation shall show that the truck and engine meet all requirements of the Program and meet eligibility requirements of the Project as described in Attachment A, paragraph 5.

ATTACHMENT B - INSURANCE AND WARRANTY REQUIREMENTS

Verification of Coverage:

Grantee shall provide the Air District certificates and/or other evidence of the insurance coverage required below. The Air District reserves the right to require Grantee to provide complete, certified copies of any insurance offered in compliance with these specifications. Certificates, policies and other evidence provided shall specify that the Air District shall receive 30 days advanced notice of cancellation from the insurers.

Minimum Scope of Insurance

Throughout the Term as defined in Section III of the Agreement of which this Attachment is a part, Grantee shall obtain and maintain in full force and effect the insurance as set forth below:

Liability Insurance:

Corporations and Public Entities - a limit of not less than \$1,000,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Grantee, and to the operation of the vehicles operated by the Grantee.

Single Vehicle Owners - a limit of not less than \$750,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Grantee, and to the operation of the vehicles operated by the Grantee.

At the time the Grantee submits invoices for payment to the Air District, the Grantee must demonstrate that the Equipment purchased in the funding Agreement, of which this is an Attachment, is covered under the following property insurance, if Grantee has not already demonstrated possession of this insurance to the Air District. The property insurance must remain effective from the date of the invoice to the Air District to the end of the Project Term as defined in Paragraph 6 of Attachment A of the Agreement.

Property Insurance for New Vehicle Purchase – comprehensive and collision coverage in an amount of not less than the insurable value of Grantee's vehicle(s) funded under the Agreement of which this Attachment is a part, and covering all risks of loss, damage or destruction of such vehicle(s). District encourages Grantee to name District as loss-payee on the insurance policy when practicable.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Air District may, at its sole discretion, waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance.

Minimum Warranty Requirements of the Program

Grantee is required to accept and keep in-force the minimum warranties required by the Program for funded Equipment. For Replacement and Repower Projects the minimum warranty is 1-year or 100,000 mile major engine component warranty that covers parts and labor. For any diesel particulate filters purchased as part of a funded project, Grantee is required to accept the warranty offered by the Original Equipment Manufacturer (OEM) of the filter at the time of purchase. The Grantee is responsible for all maintenance and other actions necessary to keep the warranty in effect. The Grantee is also responsible for maintaining documentation of warranty according to Guidelines of the Program and to make available this documentation upon request for the purposes of review or audit according to Section II.4.

ATTACHMENT C – EQUIPMENT ACCIDENTALLY RENDERED INOPERABLE OR STOLEN

If the Grantee's insurance company or the Air District determines that Project Equipment has been accidentally rendered inoperable, the Grantee may replace the inoperable Equipment with equipment certified to equal or lower emission levels, and continue with the terms of this Agreement or request to close-out the terms of this Agreement with the Air District. The Grantee shall notify the Air District if the Grantee chooses to use his/her own funds to replace the Project Equipment with equipment certified to equal or lower emission levels, and continue with the terms of this Agreement. The Grantee shall be responsible for providing the Air District with updated information for the new equipment.

If the Grantee reports to the Air District that the Program-funded Equipment has been stolen, and this is confirmed by a police report and an insurance company determination of loss due to theft, the Grantee may replace the stolen Equipment with equipment certified to equal or lower emission levels at his/her own cost, and continue with the terms of this Agreement or request to close-out the terms of this Agreement with the Air District.

The Grantee shall notify the Air District if he or she chooses to close-out this Agreement due to accident or theft. The Grantee shall provide supporting documentation (e.g., salvage title, policy report, insurance company determination, copy of insurance company reimbursement quote/check, and/or other) to the Air District exhibiting that the Equipment was accidentally rendered inoperable or stolen and remit the following amount to the Air District:

Insurance reimbursement amount (minus any lien amounts)

or

$$\text{Contract Recapture Amount} = \text{Contract Value} - \left(\text{Elapsed Equipment Project Life} \times \frac{\text{Contract Value}}{\text{Equipment Project Life}} \right)$$

Example: A Grantee receives \$50,000 in Program funding for a truck replacement project. The Grantee signs an equipment project agreement for five years (60 months). Three years and six months (42 months) after the project has been post-inspected and placed into operation, the equipment is rendered inoperable according to the above description. The Grantee may request to close-out the terms of the agreement and pay \$15,000 to the Air District.

$$\text{Contract Recapture Amount: } \$15,000 = \$50,000 - (42 \text{ months} \times (\$50,000/60 \text{ months}))$$

ATTACHMENT D – EQUIPMENT TRANSFER/SALE REQUIREMENTS

The Grantee shall be fully and legally responsible for the operation of equipment funded under this Program in compliance with the terms and conditions of this Agreement. The Grantee may not assign, sell, transfer, license, or subcontract any rights or obligations to a third party without the express prior written consent of the Air District.

Prior to completing any transfer transaction, the Grantee shall inform the party purchasing Project Equipment of the provisions of this Agreement, and disclose the remaining Project Term. The Grantee shall be responsible for establishing contact between the new owner and the Air District to facilitate the transfer of the contract provisions and terms. The Grantee shall provide the Air District with the purchase price of all sold Project Equipment.

The Grantee shall provide any prospective new owner with valid contact information for the Air District so the new owner can assume legal responsibility under this Agreement or enter into a new agreement with the Air District for the remainder of the Project Term. The Grantee shall not be relieved of the legal obligation to fulfill the conditions of this Agreement unless the Grantee, the new owner, and the Air District execute an assignment and delegation agreement or the Air District and the new owner execute a novation that terminates and replaces this Agreement.

If the Grantee chooses to sell Project Equipment for any reason, or is required to replace Project Equipment with cleaner equipment prior to the end of the Project Term, the Grantee shall notify the Air District and receive prior written consent for the transaction from the Air District. Prior to completing the replacement transaction, the Grantee shall make the new equipment available for inspection by the Air District to verify the equipment meets all Program requirements.

If Project Equipment is sold without compliance with this section, any of the remedies set forth in Attachment A, Section 13 shall be imposed.

To avoid the limits on transfer or sale set forth in this Attachment D, Grantee may elect to buy-out this Agreement pursuant to the procedures in Attachment E prior to the transfer or sale.

ATTACHMENT E – OPTIONAL PROJECT AGREEMENT BUY-OUT

The Grantee shall be fully and legally responsible for the operation of equipment funded under this Program in compliance with the conditions of this Agreement. The Grantee may not assign, sell, transfer, license, or subcontract any rights or obligations to a third party without the express prior written consent of the Air District.

If the Grantee cannot meet the obligations of this Agreement for any reason, and the procedures set forth in Attachments C or D do not apply or the Grantee does not wish to rely upon them, the Grantee may request to buy-out the remaining time on this Agreement prior to the end of the Project Term. The Grantee shall notify the Air District and receive prior written consent for the transaction from the Air District. The Grantee shall remit the Agreement buy-out amount to the Air District, based on the remainder of the contract value and an administrative fee. The Agreement buy-out amount shall be determined according to the formula shown below.

Agreement Buy-out Formula:

$$\text{Contract Buy - Out Amount} = \left(\text{Contract Value} - \frac{\text{Elapsed Equipment Project Life} \times \text{Contract Value}}{\text{Equipment Project Life}} \right) + \text{Admin Fee}$$

The Administrative Fee shall be:

- \$5,000 for truck projects.
- \$10,000 for locomotive, commercial harbor craft, and cargo equipment projects.
- \$250,000 for ships at berth projects.

Example: An equipment owner receives \$50,000 in Program funding for a truck replacement project. The owner signs an equipment project contract for five years (60 months). Three years and six months (42 months) after the project has been post-inspected and placed into operation, the equipment owner requests to close-out the outstanding contract. The equipment owner may request to close-out the terms of the agreement and pay \$20,000 to the Air District.

$$\text{Contract Buy-out Amount: } \$20,000 = (\$50,000 - (42 \text{ months} \times (\$50,000/60 \text{ months})) + \$5,000$$